

**DISTRICT OF COLUMBIA
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

SANTHY MALLIOS
Respondent

Case No.: I-00-20397
I-02-72049

FINAL ORDER

I. Introduction

On February 6, 2002, the Government served a Notice of Infraction upon Respondent Santhy Mallios, alleging a violation of 21 DCMR 700.3, which requires property owners to containerize solid wastes properly, and a violation of 21 DCMR 707.3, which requires property owners to provide a sufficient number of waste containers to store solid wastes during the usual interval between trash collections. The Notice of Infraction alleged that the violations occurred on February 5, 2002 at 2318 18th Street, N.W., and sought a fine of \$1,000 for each violation.

Respondent did not file an answer to the Notice of Infraction within the required twenty days after service (fifteen days plus five additional days for service by mail pursuant to D.C. Official Code §§ 2-1802.02(e), 2-1802.05). Accordingly, on April 2, 2002, this administrative court issued an order finding Respondent in default and subject to the statutory penalty of \$2,000 required by D.C. Official Code § 2-1801.04(a)(2)(A), and requiring the Government to serve a second Notice of Infraction.

The Government served the second Notice of Infraction on April 9, 2002. Respondent filed a timely plea of Admit with Explanation to the second Notice of Infraction and the Government has replied.

II. Summary of the Evidence

Peter Mallios, who states that he owns the property with Respondent Santhy Mallios, filed the plea and explanation on the letterhead of “2318 18th Street Joint Venture,” and identified himself as a partner in that joint venture.¹ Mr. Mallios states that the trash company had stopped making regular pickups at the property some time in January. Mr. Mallios asserts that he does not visit the property regularly and was unaware of the problem until informed by tenants on February 5, the date cited in the Notice of Infraction. On that day, Mr. Mallios states that he hired a new trash service, which removed the accumulated trash and began regular service two days later. Mr. Mallios further states that the property always has had sufficient trash containers and that the problem on February 5 was a temporary one, caused by the failure of the trash company to make its regular pickups. Mr. Mallios further states that the Notice of Infraction was not properly served because it was addressed to Respondent at the property, which is not Respondent’s home or business address. He asserts that Respondent never received the first Notice of Infraction, although he did receive the second Notice of Infraction and the April 2 Order from tenants at the property.

The Government responds that its evidence “will conclusively show that at the date and time indicated on the [c]itation, the respondent was in violation of 21 DCMR 700.3, and should

¹ Peter Mallios, without objection from Santhy Mallios, has held himself out to have authority to bind Santhy Mallios for purposes of this adjudication and, on this record, I conclude that he has actual or apparent authority to do so. *See DOH v. Bloch & Guggenheimer, Inc.* OAH No. I-00-10439 at 1, n.1 (Final Order, April 18, 2001).

be held accountable.” The Government’s response is accompanied by photographs of the offending trash and a copy of a Property Detail Sheet issued by the Office of the Chief Financial Officer. The Government does not address Respondent’s contentions concerning the number of trash containers or the reasons for the late response, nor does it take issue with Respondent’s contentions concerning the prompt correction of the problem.

III. Findings of Fact

Respondent owns the building at 2318 18th Street, N.W. On February 5, 2002, trash in plastic bags had accumulated on the ground near the trash cans at the property due to the failure of the trash company hired by Respondent to make all regularly scheduled pickups in January. Peter Mallios, a co-owner of the property with Respondent Santhy Mallios, took prompt action to correct the problem after learning about it on February 5. Based upon Respondent’s statement, which the Government has not contested, I find that the number of trash containers at the property on February 5 was adequate to hold the trash that normally accumulates at the property between regularly scheduled trash pickups. Respondent has accepted responsibility for the violations and there is no evidence in the record that he has a history of prior violations.

Based upon the certificate of service signed by the inspector who issued the first Notice of Infraction, that notice was mailed to Respondent at the property address. Based upon Respondent’s unrefuted statement and the Property Detail Sheet filed by the Government, which does not list a mailing address for the property owner, I find that the property is not Respondent’s last known residence or business address. I further find that Respondent did not receive the first Notice of Infraction.

IV. Conclusions of Law

A. The § 700.3 Violation

The Notice of Infraction charges Respondent with a violation of 21 DCMR 700.3, which provides:

All solid wastes shall be stored and containerized for collection in a manner that will not provide food, harborage, or breeding places for insects or rodents, or create a nuisance or fire hazard.

Respondent's plea of Admit with Explanation establishes that he violated § 700.3 on February 5. The storage of wastes in plastic bags on the ground at Respondent's building violated § 700.3 because rats easily could obtain access to food items in the plastic bags. The Rodent Control Act of 2000 classified a violation of § 700.3 as a Class 1 infraction, which is punishable by a fine of \$1,000 for a first offense.² 16 DCMR 3201. Due to Respondent's acceptance of responsibility for the violation, his prompt correction of the problem and his lack of a history of prior violations, I will reduce the fine to \$500.

B. The § 707.3 Violation

The Notice of Infraction also charges Respondent with violating 21 DCMR 707.3, which provides:

If containers are used for the storage of rubbish, or a combination of rubbish and food waste (garbage), a sufficient number shall be provided to store such solid wastes which may accumulate on the premises during the usual interval between collections.

² The Rodent Control Act of 2000 is Title IX of the Fiscal Year 2001 Budget Support Act of 2000, effective October 19, 2000, D.C. Law 13-172. See 47 D.C. Reg. 8962 (November 10, 2000); 47 D.C. Reg. 6308 (August 11, 2000). Section 910(b) of that Act established new fines for violations of various rodent control measures, including § 700.3. 47 D.C. Reg. at 6339 (August 11, 2000).

Respondent's plea of Admit with Explanation establishes that he violated § 707.3 on February 5, 2002. The Rodent Control Act of 2000 also classified a violation of § 707.3 as a Class 1 infraction, punishable by a fine of \$1,000 for a first offense. *See* 47 D.C. Reg. at 6339 (August 11, 2000). A property owner violates § 707.3 if it uses containers to store solid wastes, but provides an insufficient number of such containers to store the wastes that accumulate on the premises during the normal period between trash collections at the property. Respondent's unrefuted explanation, which I have credited, establishes that the trash accumulation on February 5 resulted from the trash company's failure to observe the "usual interval between collections," not from a lack of sufficient containers to hold the trash that accumulated between scheduled pickups. Accordingly, while Respondent's plea of Admit with Explanation establishes a violation of § 707.3, I will suspend the applicable fine for the violation. D.C. Official Code § 2-1801.03(b)(6).

C. The Untimely Filing

The Civil Infractions Act, D.C. Code Official Code §§ 2-1802.02(f) and 2-1802.05, requires the recipient of a Notice of Infraction to demonstrate "good cause" for failing to answer it within twenty days of the date of service by mail. If a party does not make such a showing, the statute requires that a penalty equal to the amount of the proposed fine must be imposed. D.C. Official Code §§ 2-1801.04(a)(2)(A) and 2-1802.02(f). The evidence shows that Respondent did not receive the first Notice of Infraction, which was not addressed to Respondent's last known home or business address. Pursuant to D.C. Official Code § 2-1802.05, service of the notice was inadequate. Respondent, therefore, has established good cause for not answering the first Notice of Infraction and is not liable for the statutory penalty.

V. Order

Based upon the foregoing findings of fact and conclusions of law, it is, this _____ day of _____, 2002:

ORDERED, that Respondent is **LIABLE** for violating 21 DCMR 700.3 on February 5, 2002 and must pay a fine of \$500 for that violation; and it is further

ORDERED, that Respondent is **LIABLE** for violating 21 DCMR 707.3 on February 5, 2002, but the fine for that violation is **SUSPENDED**; and it is further

ORDERED, that Respondent has shown good cause for failing to file a timely answer to the first Notice of Infraction and the \$2,000 penalty assessed by the Order of April 2002 is **VACATED**; and it is further

ORDERED, that Respondent shall pay a total of **FIVE HUNDRED DOLLARS (\$500)** in accordance with the attached instructions within twenty (20) calendar days of the mailing date of this Order (15 days plus 5 days service time pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, interest shall accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, starting from the date of this Order, pursuant to D.C. Code Official Code § 2-1802.03 (i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including

the suspension of Respondent's licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real and personal property owned by Respondent pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent's business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

/s/ **05/28/02**

John P. Dean
Administrative Judge